

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

~~25 - 10013~~

U.S TRUST COMPANY, N.A., in its capacity  
as Plan Administrator and Trustee of the  
Arthur D. Little, Inc Employees' MDT  
Retirement Plan,

Plaintiff,

v.

KARL P. FAGANS, and GARY BECK,

Defendants.

Civil Action  
No.

MAGISTRATE JUDGE Devin

RECEIPT #

AMOUNT \$150

SUMMONS ISSUED yes

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DEPUTY CLERK JM

DATE 1/14/05

## COMPLAINT

### **Introduction.**

1. This is an action by the plaintiff trustee and plan administrator of an employee retirement plan governed by the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.* to compel defendant plan participants Karl P. Fagans and Gary Beck to return inadvertent overpayments of retirement benefits made to them. Overpayments of plan benefits were made to the defendants and a number of other plan participants. When the overpayments were discovered, plaintiff made demand of participants who received excess distributions, including defendants, to return the overpayments. Other participants who received excess distributions of benefits returned the excess distributions. Defendants, despite repeated demands that they do so, have failed and refused to return the excess distributions that in good conscience belong to the plan and other plan participants.

### **Jurisdiction and Venue.**

2. This Court has jurisdiction over the subject matter of this ERISA claim for equitable relief under 29 U.S.C. § 1132(a)(3) pursuant to 29 U.S.C. § 1132(e)(1).

3. This Court has personal jurisdiction over the defendants because the plan in question specifies that its situs shall be Cambridge, Massachusetts and because defendants' participation in the plan and their entitlement to benefits under the plan arises out of their employment with the plan sponsor Arthur D. Little, Inc. (Arthur D. Little"), a Massachusetts corporation that at all relevant times had a principal place of business in Cambridge, Massachusetts and that conducted its business operations, including administration of the plan, in this District.

4. Venue is proper in this District pursuant to 29 U.S.C. § 1132(e)(2) because the plan in question is administered in this District.

#### **The Parties.**

5. Plaintiff U.S. Trust Company, N.A. ("U.S. Trust") is a wholly owned subsidiary of U.S. Trust Corporation and has a place of business at 225 Franklin Street, Boston, Massachusetts. U.S. Trust is the duly appointed Trustee and Plan Administrator of the Arthur D. Little, Inc Employees' MDT Retirement Plan (the "Plan").

6. Defendant Karl P. Fagans ("Fagans") is an individual who on information and belief resides at 104 Connecticut Drive, Chocowinity, North Carolina. Fagans is a former employee of Arthur D. Little and a participant who received benefits under the Plan, including overpayments that are the subject of this action.

7. Defendant Gary Beck ("Beck") is an individual who upon information and belief resides at 2928 Oakwood Lane, Torrance, California. Beck is a former employee of Arthur D. Little and a participant who received benefits under the Plan, including overpayments that are the subject of this action.

**Factual Allegations.**

8. The Plan is an ERISA governed defined contribution, profit-sharing retirement plan established by Arthur D. Little. Employees of Arthur D. Little became eligible to participate in the Plan upon attainment of age 21 and completion of one year of service with the company. The Memorial Drive Trust (“MDT”) holds the assets of the Plan. Plan participants or members are entitled to receive vested benefits in the form of a lump-sum distribution (“Lump Sum Payments”), periodic installment payments (“Periodic Payments”), an annuity, or a combination of all three upon the normal retirement age of 65 or if they have reached age 55 and are no longer employed by the company.

9. On or about February 5, 2002, Arthur D. Little filed for protection under Chapter 11 of the United States Bankruptcy Code. On or about February 14, 2003, the United States Bankruptcy Court for the District of Massachusetts confirmed a plan of liquidation.

10. On or about May 10, 2002, U.S. Trust was appointed the successor to the prior trustees of MDT. Effective on or about July 8, 2002, U.S. Trust was appointed Plan Administrator and in that capacity assumed responsibility for the custody, investment and operation of the Plan and MDT.

11. In its capacity as Trustee and Plan Administrator, U.S. Trust discovered that excess benefit distributions have been made to a number of Plan participants, including Fagans and Beck.

12. Fagans received excess distributions in the total amount of \$43,434.32.

13. Beck received excess distributions in the total amount of \$62,204.74.

14. As a general matter, the overpayments to plan participants resulted because distributions were made based on prior periodic valuations of plan assets and did not reflect the

current, *i.e.*, time of distribution, value of the participant's account. In the case of Beck, he received in January 2002 a Lump Sum Payment of \$155,423.93 that did not include substantial 2001 investment losses that had not yet been posted to his account and thus constituted an overpayment of \$62,204.74.

15. In Fagan's case, the overpayment resulted from the inadvertent payment of two \$25,000.00 Periodic Payments in July 2001 and January 2002 that should never have been made because Fagans had received Lump Sum Payments in 2001 for most of the value of his account (leaving a balance of only \$6,565.68). He therefore should not have received the two additional Periodic Payments, but only the \$6,565.68 remaining in his account after the Lump Sum Payments.

16. Upon learning of the overpayments to a number of plan participants, U.S. Trust made written demand for reimbursement from all participants who received the overpayments. Only Beck and Fagans have failed and refused to remedy the overpayments by returning distributions that rightfully belong to the Plan and other participants.

**COUNT I**  
**(For Recovery of Plan Overpayments Pursuant to 29 U.S.C. § 1132(a)(3))**

17. U.S. Trust realleges and incorporates the allegations contained in paragraphs 1 through 16 of this Complaint.

18. The Plan overpayments made to Fagans and Beck belong in good conscience to the Plan and the other plan participants.

19. The failure and refusal of Fagans and Beck to return the overpayments upon demand by U.S. Trust was improper and resulted in Fagans and Beck retaining funds to which they have no entitlement.

20. Equity requires that the overpayments made to Fagans and Beck be returned to the Plan.

**COUNT II**  
**(Common Law Restitution)**

21. U.S. Trust realleges and incorporates the allegations contained in paragraphs 1 through 20 of this Complaint.

22. The Plan overpayments made to Fagans and Beck belong in good conscience to the Plan and the other plan participants.

23. The failure and refusal of Fagans and Beck to return the overpayments upon demand by U.S. Trust was improper and resulted in Fagans and Beck retaining funds to which they have no entitlement.

24. Equity requires that the overpayments made to Fagans and Beck be returned to the Plan.

**Prayer for Relief.**

WHEREFORE, U.S. Trust requests that the Court:

1. Enjoin Fagans and Beck preliminarily and permanently from refusing to return overpayments made by the Plan and held by them;
2. Order Fagans and Beck to return overpayments made by the Plan and held by them;
3. Award to U.S. Trust, as Trustee and Plan Administrator of the Plan, damages resulting from the failure and refusal of Fagans and Beck to return overpayments made by the Plan and held by them;
4. Award to U.S. Trust its costs and attorneys' fees pursuant to 29 U.S.C. § 1132(g);
5. Award to U.S. Trust prejudgment interest; and

6. Award such other relief as is just and proper.

U.S. TRUST U.S TRUST  
COMPANY, N.A.,

By its attorneys,

Joseph F. Hardcastle  
Cintra S. Shober

Joseph F. Hardcastle (BBO# 559479)  
Cintra S. Shober (BBO # 560120)  
HARDCASTLE & SHOBER  
141 Tremont Street, 3<sup>rd</sup> Floor  
Boston, MA 02111  
(617) 423-9990

January 3, 2005

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) U.S. TRUST COMPANY, N.A. v. KARL P. FAGANS ET AL.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

05-10013 BK

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO 

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO 

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO 

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO 

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division 

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division 

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO 

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Joseph F. Hardcastle, Cintra S. ShoberADDRESS Hardcastle & Shober, 141 Tremont Street, Boston, MA 02111TELEPHONE NO. (617) 423-9990

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b> U.S. TRUST COMPANY, N.A.		<b>DEFENDANTS</b> KARL P. FAGANS and GARY BECK																				
(b) County of Residence of First Listed Plaintiff <u>Suffolk</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>Beaufort County,</u> (IN U.S. PLAINTIFF CASES ONLY) <u>North Carolina</u>																				
Joseph F. Hardcastle, Cintra S. Shober (c) Attorney's (Firm Name, Address, and Telephone Number) Hardcastle & Shober, 141 Tremont Street, Boston, MA 02111 (617) 423-9990		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)																				
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																				
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF																			
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> PTF <input type="checkbox"/> DEF																			
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<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)																						
<table border="1"> <thead> <tr> <th>CONTRACT</th> <th>TORTS</th> <th>FORFEITURE/PENALTY</th> <th>BANKRUPTCY</th> <th>OTHER STATUTES</th> </tr> </thead> <tbody> <tr> <td> <input type="checkbox"/> 110 Insurance  <input type="checkbox"/> 120 Marine  <input type="checkbox"/> 130 Miller Act  <input type="checkbox"/> 140 Negotiable Instrument  <input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment  <input type="checkbox"/> 151 Medicare Act  <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. 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<b>V. ORIGIN</b> <input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment																
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <b>29 U.S.C. § 1132(a)(3)</b>																						
Brief description of cause: <b>Recovery of overpayment of retirement plan benefits.</b>																						
<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23			DEMAND \$ 105,639.06	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																	
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions): None.			DOCKET NUMBER																		
DATE	SIGNATURE OF ATTORNEY OF RECORD																					
1/03/05	<i>Joseph F. Hardcastle, Cintra S. Shober</i>																					
FOR OFFICE USE ONLY																						

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_